IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 817 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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A.M.T.S.

Versus

SABMIYAN NABIMIYAN SAYYAD

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Appearance:

1. Special Civil Application No. 817 of 2004

MR HS MUNSHAW for Petitioner No. 1

MR AI SURTI for Respondent No. 1

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CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 17/09/2004

ORAL JUDGEMENT

RULE. Mr.A.I. Surti, the learned advocate waives service of rule. The petitioner-Ahmedabad

Municipal Transport Service (AMTS) is before this Court being aggrieved of the judgement and award dated 20.09.2003 in Reference (LCA) No.481 of 1997 passed by the learned Judge of the Labour Court at Ahmedabad. The respondent workman, who was serving as driver with the petitioner establishment was dismissed from service on 24.01.1997. That is how the reference came into being which is partly allowed by the learned Judge. The learned Judge was pleased to hold that there is no question of ordering reinstatement of the respondent workman as during the pendency of reference, on 01.07.2003 he reached the age of superannuation. The learned Judge was pleased to quash and set aside the order of dismissal and direct the petitioner-AMTS to treat the workman on duty till he reached the age of superannuation. The learned Judge was pleased to order that the respondent workman will not be entitled to any wages for the intervening period but then respondent workman should be treated to have retired from service on his reaching the age of superannuation and on that basis he should be paid all benefits available to him under the law.

2. Mr.Munshaw, the learned advocate appearing for the petitioner establishment vehemently submitted that the learned Judge without holding respondent workman 'non guilty' of unauthorised absence cannot allow him to go, without punishment. The learned advocate submitted that therefore, the order requires to be interfered with by this Court and requires to be quashed and set aside. He also submitted that, it is on record that the respondent workman remained unauthorisedly absent for 138 days and 94 days in the years 1994 and 1995 respectively and did not give any intimation to the authority. The petitioner establishment is rendering public service, which was adversely affected on account of unauthorised absence of the respondent workman.

3. Mr.Surti, the learned advocate for the respondent workman submitted that the respondent workman had put in long years of service, he was suffering from tuberculosis, of which intimation was given to the authorities who had sanctioned the leave of absence. The learned advocate submitted that the workman had submitted medical certificate and had prayed for grant of leave. Looking to the fact that workman was suffering from tuberculosis the question as to whether the workman had submitted the medical certificates regularly is not required to be gone into because once the factum of the respondent workman suffering from tuberculosis was within the knowledge of the authorities, the authorities were

expected to take humanitarian approach of the matter and should not have acted harsh.

4. In view of that the award of the learned Judge of the Labour Court is modified to the following extent. The petitioner establishment is directed to treat the workman to have taken voluntary retirement on the date of dismissal, i.e. 24.01.1997. The petitioner establishment should award all benefits to the respondent workman on that basis. Rule is made absolute to the aforesaid extent only. No order as to costs.

(Ravi R. Tripathi, J.)

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